

## **REMARKS**

Please reconsider the rejections of the claims in light of the amendment and the following arguments and allow the pending claims.

Applicants have amended claim 25 to clarify that the water-swellaable polymer mixture is cross-linked and cross-linked to a degree that controls the rate that said at least one dye component dissolves into said liquid when contacted therewith. These amendments do not introduce new matter. Specifically, the water-swellaable polymer is cross-linked to a degree that controls the rate that said at least one dye component dissolves into said liquid when contacted therewith limitation is supported by the present application at multiple instances, including, for example, on page 16, lines 14-30 and page 28, Table 1.

In the Final Office Action, the Examiner rejected claims 25-28 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,678,704 to Fellows (Fellows). The Examiner also rejected claims 25-34 under 35 U.S.C. § 103(a) as being obvious over GB 2 211 092 (GB '092) in view of U.S. Patent No. 4,392,908 to Dehnel (Dehnel).

Applicants have hereby mooted both rejections to claims 25-28 under 35 U.S.C. § 102(b) and claims 25-34 under 35 U.S.C. § 103(a) in light of the amendments to claim 25. None of the references alone or in combination teach or suggest all the present limitations of: an absorbent article containing an active chemical comprising: an absorbent web containing fibers, said absorbent web having at least two outer surfaces; and an indicator system applied to said web, said indicator system comprising at least one dye component imparting a color to said at least one surface, said at least one dye component being capable of dissolving into a liquid when contacted therewith, said at

least one dye component dissolving at a faster rate than said active chemical when contacted with said liquid such that said color of said at least one surface becomes altered before said active chemical is completely exhausted during the use of said article; and a cross-linked water-swellaable polymer mixture applied to said web, wherein said cross-linked water-swellaable polymer is cross-linked to a degree that controls the rate that said at least one dye component dissolves into said liquid when contacted therewith.

I. **Rejection of claims 25-28 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,678,704 to Fellows**

First, the Examiner rejected claims 25-28 under 35 U.S.C. § 102(b) as being anticipated by Fellows. Per the Examiner, the fabric of Fellows describes the essential limitations of the claimed invention including, for example, an impregnated fabric to which an indicator dye has been applied and which has a swellaable polymer comprising a cationic starch material. Applicants respectfully submit that the presently claimed invention differs from Fellows.

The Examiner asserts in the present Office Action that Fellows' cationic starch molecules are equivalent to Applicants' claim 25 limitation of a water-swellaable polymer mixture. Applicants have hereby mooted the § 102(b) rejection to Fellows in light of the addition of the cross-linked water-swellaable polymer limitation to claim 25. With regards to the present amendment, Fellows does not teach a cross-linked water-swellaable polymer. There is no teaching in Fellows that the water-soluble starch molecules are cross-linked. Accordingly, Fellows cannot teach the present limitation of wherein said

cross-linked water-swellaable polymer is cross-linked to a degree that controls the rate that said at least one dye component dissolves into said liquid when contacted therewith.

To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. Karsten Mfg. Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). Because Fellows does not disclose the cross-linked limitation as set forth in the amended application, Fellows cannot anticipate the pending claims. Therefore, it is respectfully requested that the Examiner withdraw the 35 U.S.C. § 102(b) rejection of claims 25-28.

**II. Rejection of claims 25-34 under 35 U.S.C. § 103(a) as being obvious over GB 2 211 092 in view of U.S. Patent No. 4,392,908 to Dehnel.**

The Examiner had also rejected claims 25-34 under 35 U.S.C. § 103(a) as being unpatentable over GB '092 in view of Dehnel. The Examiner stated on page 6 of the present Action that it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the water-swellaable polymer of Dehnel in the fabric of GB '092 motivated with the expectation that there would be "an improvement in the absorbence of the absorbent article".

To establish a prima facie case of obviousness based on a combination of various references, there must be some teaching, suggestion or motivation in the prior art to make the specific combination that was made by the Applicant. In re Dance, 160

F.3d 1339, 1342 (Fed. Cir. 1998); In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Moreover, obviousness cannot be established by hindsight combination to produce the claimed invention. In re Gorman, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). It is the prior art itself, and not the Applicants' achievement, that must establish the obviousness of the combination.

Applicants submit that the rejections of claims 25-34 under 35 U.S.C. § 103(a) have been mooted in light of the present amendments to claim 25.

GB '092 is silent as to water-swellaable polymers and is silent as to the presently claimed limitation of cross-linked water-swellaable polymers. Instead, GB '092 is directed to a wipe having a dye indicator and an active chemical, such as sunscreen and insect repellants, being transferred to a solid surface with the dye being an indicator of the successful transfer. The dye can be applied to the wipe after being solubilized in a wax substance. However, there is no teaching in GB '092 that the wax is water-swellaable or that the wax is cross-linked.

Dehnel, on the other hand, is focused on providing a water-absorbent article with water-swellaable particles that are embedded within a coating of a thermoplastic adhesive resin to improve the absorbency of such absorbent articles as diapers. Dehnel is silent as to a dye indicator and an active chemical. Dehnel is also silent as to the presently claimed limitation of wherein said cross-linked water-swellaable polymer is cross-linked to a degree that controls the rate that said at least one dye component dissolves into said liquid when contacted therewith.

Even if one of ordinary skill in the art were to combine GB '092 and Dehnel, which is believed to be improper as explained below, the combination would still not

meet every one of the limitations in claim 25 of the present application. See MPEP § 2142 - § 2143 (the prior references, when combined, must teach or suggest all the claim limitations). For example, the combination of GB '092 and Dehnel would not provide the claimed limitation of wherein said cross-linked water-swellaable polymer is cross-linked to a degree that controls the rate that said at least one dye component dissolves into said liquid when contacted therewith. Because the combination of GB '092 and Dehnel would not meet every one of the limitations in claim 25 of the present application, the combination does not render the present application obvious under § 103. Therefore, it is respectfully requested that the Examiner withdraw the §103 rejection of claims 25-34.

There is no motivation (other than the hindsight motivation provided by the Applicants' application) to combine the GB '092 and Dehnel references. GB '092 is directed to determining how much of a chemical agent is transferred to a solid surface and Dehnel is directed to improving the absorbency of a water-absorbent article such as a diaper. There simply is no specific motivation to be found in the art to combine these two very different disclosures. The Examiner has asserted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the water-swellaable polymer of Dehnel in the fabric of GB '092 motivated with the expectation that there would have been "an improvement in the absorbence of the absorbent article."

The motivation cited by the Examiner would not have led one of skill in the art to combine the water-swellaable particles of Dehnel into the fabric of GB '092, because the teachings of Dehnel focus solely on improving absorbency, not determining the extent of transfer for a chemical agent. At the time of the present invention, one of skill in the

art would have read Dehnel to teach making an absorbent fabric or diaper even more absorbent by using a water-swellaable polymer. Dehnel would not have taught one of skill in the art that cross-linking a water-swellaable polymer would facilitate even greater control over the rate that a dye component dissolves into a liquid when contacted therewith. This characteristic is now claimed by the Applicants. Specifically, the present application has been amended to clarify that the invention is directed to determining how much of a chemical agent is released into a liquid and transferred to a solid surface by use of a dye and a cross-linked water-swellaable polymer, where the cross-linked water-swellaable polymer is cross-linked to a degree that controls the rate that the dye dissolves into a liquid. Therefore, it is respectfully requested that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of claims 25-34.

In summary, in view of the foregoing arguments and amendments, we respectfully submit that the rejected claims are patentably distinct over the references cited by the Examiner and meet all other statutory requirements. We believe that the present Application is now in complete condition for allowance and, therefore, respectfully request the Examiner to reconsider the rejections in the Office Action and allow this Application. We invite the Examiner to telephone the undersigned should any issues remain after the consideration of this response.

Please charge any additional fees that may be required to Deposit Account No.

50-2548.

Respectfully requested,

NELSON MULLINS RILEY & SCARBOROUGH

December 1, 2003

Date

A handwritten signature in dark ink, appearing to read 'R. S. Thomas', is written over a horizontal line.

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